



CDSS

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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

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EDMUND G. BROWN JR.
GOVERNOR

May 24, 2017

ORD #0316-05

Notification of 15-Day Public Availability
of Changes to Regulations and Supporting
Documents and Information

This Notice supersedes the May 22, 2017 Notification of 15-Day Public Availability. This Notice adds the Law Enforcement Contact LIC624-LE (4/17) form and corrects the form revision date at Section 84002(a) and in supporting documents. It also corrects the Updated Informative Digest acronym for THPP to transitional housing placement program. There are no other changes.

On September 7, 2016, a public hearing was held to consider the proposed adoption, amendment or repeal of the following regulations:

ITEM #2 – CCL Law Enforcement Contacts

Pursuant to the provisions of Section 11346.8(c) of the Government Code, the California Department of Social Services (CDSS) has revised the Statement of Reasons and the proposed regulatory language. A copy of the full text of the regulations with the proposed changes indicated is enclosed for your review. Copies of the Addendum to the Initial Statement of Reasons and the Updated Informative Digest are also attached for review and comment.

Any person interested may submit written statements or arguments relating to the modified language and documents or information during the public comment period from July 22, 2016, to September 7, 2016. These statements may be submitted to the Office of Regulations Development (ORD) at the address listed below, by e-mail to ord@dss.ca.gov or by fax at (916) 654-3286. *In order to be considered, public comments must be received by CDSS on or before 5:00 p.m., June 8, 2017.*

California Department of Social Services
Office of Regulations Development
744 P Street, M.S. 8-4-192
Sacramento, CA 95814

Any questions concerning the proposed regulations and documents or information may be directed to Ying Sun, Manager of ORD at (916) 657-2586.

Enclosures

Description of Method Used to Illustrate
Changes to Original Text

In the attached regulations document, the language originally proposed is underlined. Deletions to existing language are shown by strikeout. Revisions made subsequent to public hearing are shown as follows:

Added language double underlined and bolded text

New language added following public hearing.

Deleted language double strikeout and bolded text

~~Language deleted following public hearing.~~

General Licensing:

Amend Section 80044 to read:

80044 INSPECTION AUTHORITY OF THE LICENSING AGENCY 80044

- (a) The licensing agency shall have the inspection authority specified in Health and Safety Code Sections 1526.5, 1533, 1534, ~~and 1538~~ and 1538.7.

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(Continued)

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(b) - (d) (Continued)

Authority cited: ~~Section~~ 1530, Health and Safety Code.

Reference: Sections 1501, 1526.5, 1531, 1533, 1534, ~~and 1538~~ and 1538.7, Health and Safety Code.

Group Homes:

Amend Section 84001 to read:

84001 DEFINITIONS

84001

In addition to Section 80001, the following shall apply:

- (a) (1) - (4)(A) (Continued)
- (b) (1) "Behavior Management Consultant", for the purpose of this chapter, means a person who designs and/or implements behavior modification intervention services and meets ~~one~~ of the following requirements as specified in California Code of Regulations, Title 17, Sections ~~54344(d)~~ 54342(a)(13)(A)1-7.

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~~Section 54344(d) of the California Code of Regulations, Title 17 says in part:~~

~~(d)(1)~~

~~(A) Possesses a valid license as a psychologist from the Medical Board of California or Psychology Examining Board;~~

~~(B) Is a licensed clinical social worker pursuant to Business and Professions Code, Sections 4996 through 4998.7;~~

~~(C) Is a licensed marriage family and child counselor pursuant to Business and Professions Code, Sections 4980 through 4984.7; or~~

~~(D) Is any other licensed professional whose California licensure permits the design and/or implementation of behavior modification intervention services.~~

Sections 54342(a)(13)(A)1-7 of the California Code of Regulations, Title 17 states as follows:

1. Individuals vendored as a behavior management consultant prior to, or as of, December 31, 2006, that have not previously completed twelve semester units in applied behavior analysis, shall have until December 31, 2008 to complete twelve semester units in applied behavior analysis and possess a license and experience as specified in 3. through 7. below.
2. Individuals vendored as a behavior management consultant on, or after, January 1, 2007, shall, prior to being vendored, have completed twelve semester units in applied behavior analysis and possess a license and experience as specified in 3. through 7. below.

3. Possesses a valid license as a psychologist from the Medical Board of California or Psychology Examining Board; or
4. Is a Licensed Clinical Social Worker pursuant to Business and Professions Code, Sections 4996 through 4998.7; or
5. Is a Licensed Marriage and Family Therapist pursuant to Business and Professions Code, Sections 4980 through 4984.7; or
6. Is any other licensed professional whose California licensure permits the design and/or implementation of behavior modification intervention services.
7. Have two years experience designing and implementing behavior modification intervention services.

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(c) (1) - (k) (Continued)

(l) —(Reserved) (1) "Law enforcement" means any officer, sheriff, or marshal of a city, county, state, or federal law enforcement agency.

(m) (1) - (z) (Continued)

Authority cited: Section 17730, Welfare and Institutions Code and Sections 1522.41(j), 1530, 1530.8 and 1530.9, Health and Safety Code.

Reference: Sections 1501, 1502, 1503, 1507, 1507.2, 1522.4, 1522.41, 1522.41(j), 1530.8 and 1531, Health and Safety Code; and Sections 362.04(a)(2), 362.05(a), 727(a)(4)(A), 11331.5(d), 11403, 11406(c), 17710(a), (d), (g), and (h), 17731, 17732.1 and 17736(a) and (b), Welfare and Institutions Code; and 45 CFR Section 1351.1(k).

Amend Section 84002 to read:

84002 DEFINITIONS - FORMS

84002

The following forms which are incorporated, in their entirety, by reference*, apply to the regulations in Title 22, Division 6, Chapter 5 (Group Homes). Additional forms applicable to Group Homes and other residential facilities are incorporated by reference in Section 87102.

(a) LIC 624-LE (4/17), Law Enforcement Contact Report.

(a) (Continued)

(b) (Continued)

(c) (Continued)

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1520.1(B)(1) and (2), ~~and~~ 1522.41(c)(1) and 1538.7, Health and Safety Code.

Amend Section 84061 to read:

84061 REPORTING REQUIREMENTS

84061

(a) (Continued)

(b) The licensee shall ensure that the child's authorized representative is notified no later than the next ~~working~~ business day if the following circumstances have occurred without the authorized representative's participation:

(1) - (3) (Continued)

(c) - (e) (Continued)

(f) The licensee shall notify the licensing agency in writing within ten ~~working~~ business days of acquiring a new member of the board of directors. The notification shall include the following:

(1) - (3)(A) (Continued)

(g) - (h)(7)(H) (Continued)

(i) The licensee shall submit reports to the Department, using form LIC 624-LE or a report containing all the information required in LIC 624-LE, regarding any incident ~~concerning that involves law enforcement contact with a child residing in the facility involving contact with law enforcement.~~

(1) The licensee shall make an initial report to the Department no later than the next business day following each incident. The initial report shall include all information described in Section 84061(i)(2)(A) through (F) that is known to the licensee at the time the report is made.

(2) Within six months of the incident, the licensee shall provide a follow-up report for each incident that includes the following information:

(A) The type of incident.

(B) Whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a child residing in the facility.

(C) Whether staff, children, or both were involved in the incident.

(D) The gender, race, ethnicity, and age of children involved in the incident.

- (E) The outcome of the incident, if known, including arrests, removals of children from placement, termination or suspension of staff, the filing of a 602 petition for the child, or revocation of or changes to the terms of probation,
- (3) The licensee may file the follow-up report at any time within six months of the incident, including with the initial report, if all outcomes and required information are known.
- (4) The licensee may be required to provide follow-up reports beyond the first six months if the Department determines that the information provided in either the initial or follow-up reports is incomplete, or if outcomes required to be reported are not known until later than six months after the initial report.
- (5) A licensee reporting an incident under this subsection shall not be required to report the same incident under any other provision of this Section, or under Section 80061, so long as all information required to be reported by the other provision is provided.
- ~~(5)(6)~~ For the purposes of this subsection, "contact with law enforcement" means contact with by police officers, sheriffs and others as defined in Section 84001(1)(1), with a child residing in the facility, which does not include routine contact with a probation officer who is supervising the placement of a child in the facility.

HANDBOOK BEGINS HERE

Example: Routine contacts with probation officers do not need to be reported to the Department. However, contacting a probation officer regarding an incident involving a specific child or children or other contact with a probation officer that results in ~~action taken by a probation officer in response to a reportable incident involving a child in the facility in which law enforcement was called, including, but not limited to,~~ revocation or changes of the terms of probation, a child being taken into the custody of probation, or the child being removed from placement should be reported as an outcome as required in (i)(2)(E) if known.

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Authority cited: Sections 1522.4(j) and 1530, Health and Safety Code.

Reference: Sections 1522.41(b)(4), 1531, 1538.7 and 1562, Health and Safety Code; and Section 11406(c), Welfare and Institutions Code.

Amend Section 84063 to read:

84063 ACCOUNTABILITY

84063

- (a) The board of directors shall be active in ensuring accountability, and shall perform, at a minimum, the following duties:

(1) - (7) (Continued)

- (8) Conduct board of directors or governing body meetings at least on a quarterly basis to review and discuss the group home's operation and documents as specified in Health and Safety Code Section 1520.1(f), and based upon the review, ensure that the group home complies with all applicable regulations;

(A) Review and discussion of the group home's operation shall include the incidents ~~concerning a child in the facility~~ involving contact ~~with~~ by law enforcement with a child residing in the facility that were reported to the Department as specified in Section 84061(i).

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(A) (Continued)

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(9) - (c)(4) (Continued)

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1520.1(f) and 1520.11(c), Health and Safety Code.

Amend Section 84065 to read:

84065 PERSONNEL REQUIREMENTS

84065

(a) - (h)(6) (Continued)

- (i) Notwithstanding Sections 80065(f)(1) through (6), new child care staff hired on or after July 1, 1999, shall complete a minimum of 24 hours of initial training comprised of the 8 and 16 hour training as specified in (1) and (2) below:

(1) - (2)(B)3. (Continued)

- (3) Training shall include, at a minimum, all of the flowing topics. The licensee shall determine how much time is spent on each topic, and shall ensure that child care staff have appropriate skills necessary to supervise the children in care.

(A) - (S) (Continued)

(T) The facility's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing in the facility.

(4) - (6)(A) (Continued)

(j) Annual Training

(1) - (2)(A) (Continued)

- (3) Training may include, but is not limited to, the following topics:

(A) - (N) (Continued)

(O) Topics listed in Sections 84065(i)(3)(A) through ~~(S)~~T.

(4) - (m) (Continued)

- (n) Upon employment, the group home shall make available for review by all group home personnel, an employee training handbook that shall include the following: facility's program philosophy; facility's policies and procedures; disaster response procedures; law enforcement contact procedures; lines of authority and communication; Title 22 regulations; and reporting requirements.

(1) - (p)(1) (Continued)

Authority cited: Sections 1522.41(j) and 1530, Health and Safety Code.

Reference: Section 51, Civil Code; Sections 1501, 1522.4, 1531 and 1562, Health and Safety Code; and Section 16001.9, Welfare and Institutions Code.

Amend Section 84072.1 to read:

84072.1 DISCIPLINE POLICIES AND PROCEDURES

84072.1

- (a) The licensee shall develop, maintain and implement written facility discipline policies and procedures meeting the requirements specified in (b), ~~and~~ (c) and (d) below.

(1) - (b) (Continued)

- (c) Calls to law enforcement must be made in accordance with the facility's emergency intervention plan as specified in Section 84322. Calling or threatening to call law enforcement is prohibited as a form of discipline.

- ~~(e)~~ (d) (Continued)

(1) - (6) (Continued)

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1501 and 1531, Health and Safety Code.

Community Treatment Facilities:

Amend Section 84165 to read:

84165 PERSONNEL REQUIREMENTS

84165

(a) - (e) (Continued)

(f) The licensee shall develop, maintain, and implement a written plan for the orientation, continuing education, on-the-job training and development, supervision, and evaluation of all child care staff.

(1) - (1)(C) (Continued)

(2) The on-the-job training and development program shall include training in the following areas:

(A) - (F) (Continued)

(G) The facility's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing in the facility.

(g) - (h) (Continued)

Authority Cited: Sections 1530 and 1530.9, Health and Safety Code.

Reference: Section 51, Civil Code; Sections 1501, 1522.4, 1531 and 1562, Health and Safety Code; and Section 16001.9, Welfare and Institutions Code.

Subchapter 3. Emergency Intervention in Group Homes:

Amend Section 84300.1 to read:

84300.1 EMERGENCY INTERVENTION PROHIBITION

84300.1

(a) - (d) (Continued)

(e) Law enforcement must not be contacted as a substitute for effective care and supervision or the facility's approved continuum of emergency interventions.

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1501, 1502 and 1531, Health and Safety Code.

Amend Section 84322 to read:

84322 EMERGENCY INTERVENTION PLAN

84322

- (a) The emergency intervention plan is to be designed and approved, in conjunction with the licensee, by an individual with the qualifications of a behavior management consultant as defined in Section 84001(b)(1).

(1) - (d)(10) (Continued)

- (e) The manual restraint plan is to be included as a component of the emergency intervention plan. If the facility will not use manual restraints, the plan must include the following:

- (1) Procedures for responding to a crisis situation to prevent a child who is exhibiting assaultive behavior from injuring or endangering himself, herself or others.

(A) The external community resources to be used to assist facility personnel must be identified and listed in the plan.

(B) The facility's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing in the facility must be included in the plan.

(C) Nothing in Section 84322(e)(1)(A) or (B) shall be interpreted to require a licensee to take, or prevent from taking, any action that would endanger, or to prevent a licensee from taking any action that would protect, the health and safety of either children in care, or staff, or others.

- (f) The manual restraint plan is to be included as a component of the emergency intervention plan. If the facility will use, or it is reasonably foreseeable that the facility will use, manual restraints, the plan must include the following:

(1) - (4) (Continued)

- (5) Procedures for accessing community emergency services, including, but not limited to, law enforcement, ~~the police/sheriff departments~~ if the use of emergency interventions is not effective or appropriate.

(A) The facility's policies and procedures concerning when and how to involve law enforcement in response to an incident at the facility must be included in the plan.

(B) Nothing in Section 84322(f)(5)(A) shall be interpreted to require a licensee to take, or prevent from taking, any action that would endanger, or to prevent a licensee from taking any action that would protect, the health and safety of either children in care, or staff, or others.

(6) - (m) (Continued)

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1501 and 1531, Health and Safety Code.

Amend Section 84322.2 to read:

84322.2 RUNAWAY PLAN

84322.2

(a) - (b) (Continued)

(c) The runaway plan must include the following:

(1) - (4) (Continued)

(5) Plan to include the involvement of law enforcement, when appropriate, consistent with the policies and procedures specified in Section 84322(e)(1)(B) or Section 84322(f)(5)(A).

(6) - (g) (Continued)

Authority cited: Section 1530, Health and Safety Code.

Reference: Section 1501 and 1531, Health and Safety Code.

Amend Section 84365 to read:

84365 EMERGENCY INTERVENTION STAFF TRAINING

84365

(a) - (a)(1) (Continued)

(b) The emergency intervention training curriculum must address the following areas:

(1) - (6) (Continued)

(7) The facility's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing in the facility.

(c) - (f) (Continued)

Authority cited: Section 1530, Health and Safety Code.

Reference: Sections 1501, 1531 and 1562, Health and Safety Code.

Transitional Housing Placement Programs:

Amend Section 86001 to read:

86001 DEFINITIONS

86001

In addition to Section 80001, the following shall apply:

(a) - (k) (Continued)

(l) ~~(reserved)~~ (1) "Law enforcement" means any officer, sheriff, or marshal of a city, county, state, or federal law enforcement agency.

(m) - (z) (Continued)

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(Continued)

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Authority cited: Sections 1530 and 1559.110, Health and Safety Code.

Reference: 42 USC Section 677; Sections 1559.110 and 1559.115, Health and Safety Code; and Sections 11400, 11401, 11403, 16522.1 and 16522.5, Welfare and Institutions Code.

Amend Section 86022 to read:

86022 PLAN OF OPERATION

86022

- (a) In addition to Section 80022, excluding Sections 80022(b)(9) and (b)(11), the plan of operation shall contain the following:

(1) - (6) (Continued)

- (7) The facility's THPP's policies and procedures concerning when and how to involve law enforcement in response to an incident at the facility a THPP living unit, and how these policies and procedures will be communicated to staff, participants, and to participants' authorized representative(s).

- (A) Nothing in Section 86022(a)(7) shall be interpreted to require a licensee to take, or prevent from taking, any action that would endanger, or to prevent a licensee from taking any action that would protect, the health and safety of either participants or staff.

Authority cited: Sections 1530 and 1559.110, Health and Safety Code.

Reference: Sections 1501, 1520, 1531 and 1559.110, Health and Safety Code; and Sections 11401 and 16522.1, Welfare and Institutions Code.

Amend Section 86061 to read:

86061 REPORTING REQUIREMENTS

86061

(a) In addition to Section 80061, the following shall apply:

(1) - (2) (Continued)

(3) The licensee shall notify the THPP participant's authorized representative and placement entity no later than the next ~~working~~ business day when the participant has been removed from the THPP participant living unit under emergency circumstances without the authorized representative's participation.

(A) Within three ~~working~~ business days following relocation, the licensee shall notify the THPP participant's authorized representative and placement entity of the THPP participant's new address and telephone number.

(4) (Continued)

(5) The licensee shall notify the licensing agency, within ten ~~working~~ business days, of a change of administrator. The notification shall include the following:

(A) - (6) (Continued)

(7) The licensee shall submit reports to the Department, using form LIC 624-LE or a report containing all the information required in LIC 624-LE, regarding any incident ~~concerning~~ that involves law enforcement contact with a participant in the facility involving contact with law enforcement residing in a THPP living unit.

(A) The licensee shall make an initial report to the Department no later than the next business day following each incident. The initial report shall include all information described in items (1.) through (6.) of Section 86061(a)(7)(B) that is known to the licensee at the time the report is made.

(B) Within six months of the incident, the licensee shall provide a follow-up report for each incident that includes the following information:

1. The type of incident.
2. Whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a participant residing in the facility.
3. Whether staff, participants, or both were involved.
4. The gender, race, ethnicity, and age of participants involved.

5. The outcome of the incident, if known, including arrests, removals of participants from placement, termination or suspension of staff, the filing of a 602 petition for the child, or revocation of or changes to the terms of probation.
- (C) The licensee may be required to provide follow-up reports beyond the first six months if the Department determines that the information provided in either the initial or follow-up reports is incomplete, or if outcomes required to be reported are not known until later than six months after the initial report.
- (D) A licensee reporting an incident under this paragraph shall not be required to report the same incident under any other provision of this Section, or under Section 80061, if all information required to be reported by the other provision is provided.
- (E) For the purposes of this subsection, "contact with law enforcement" means contact by police officers, sheriffs and others, as defined in Section 86001(1)(1), with a participant residing in a THPP living unit, which does not include routine contact with a probation officer who is supervising the placement of a participant in a THPP.

HANDBOOK BEGINS HERE

Example: Routine contacts with probation officers do not need to be reported to the Department. However, contacting a probation officer regarding an incident involving a specific participant or participants or other contact with a probation officer that results in revocation or changes of the terms of probation, a participant being taken into the custody of probation, or the participant being removed from placement should be reported as an outcome as required in (a)(7)(B)5. if known.

HANDBOOK ENDS HERE

Authority cited: Sections 1530 and 1559.110, Health and Safety Code.

Reference: Sections 1501, 1531, 1538, ~~and~~ 1538.5 and 1538.7, Health and Safety Code.

Amend Section 86065 to read:

86065 PERSONNEL REQUIREMENTS

86065

(a) In addition to Section 80065, excluding ~~Subsections~~ Sections 80065(c) and (e) the following shall apply:

(1) (Continued)

(A) (Continued)

(B) All THPP personnel shall receive training on the facility's THPP's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a participant residing in the facility a THPP living unit.

(2) - (7) Handbook (Continued)

Authority cited: Sections 1530 and 1559.110, Health and Safety Code.

Reference: Section 51, Civil Code; Sections 1501, 1506, 1529.2, 1531 and 1559.115, Health and Safety Code; Sections 16001.9 and 16522.1, Welfare and Institutions Code; and Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code.

LAW ENFORCEMENT CONTACT REPORT

THIS FORM MAY BE USED TO REPORT INCIDENTS AS REQUIRED BY HEALTH AND SAFETY CODE SECTION 1538.7. A SEPARATE UNUSUAL INCIDENT REPORT DOES NOT NEED TO BE SUBMITTED IF ALL REQUIRED INFORMATION IS PROVIDED.

INSTRUCTIONS: NOTIFY LICENSING AGENCY, PLACEMENT AGENCY AND AUTHORIZED REPRESENTATIVE, IF ANY, BY NEXT BUSINESS DAY.

SUBMIT PART 1 OF THIS REPORT WITHIN 7 DAYS OF OCCURRENCE.

SUBMIT PART 2 OF THIS REPORT WITHIN 6 MONTHS OF OCCURRENCE. PART 2 MAY BE SUBMITTED SOONER THAN 6 MONTHS, INCLUDING CONCURRENTLY WITH THE INITIAL REPORT, IF ALL OUTCOMES RESULTING FROM THE INCIDENT ARE KNOWN.

PART 1

☐ Group Home ☐ STRTP ☐ Community Treatment Facility ☐ Transitional Housing Placement Provider ☐ Runaway and Homeless Youth Shelter

Licensed Capacity: _____

Current Census: _____

NAME OF FACILITY (as appears on license)

FACILITY LICENSE NUMBER

ADDRESS

TELEPHONE NUMBER

COUNTY, CITY, STATE, ZIP

DATE OF INCIDENT

TYPE OF INCIDENT (check all that apply)

Aggressive Act:

☐ Client to Client ☐ Staff to Client
☐ Client to Other ☐ Unknown
☐ Client to Staff ☐ Other to Client

Other:

☐ Behavior Episode ☐ Psychological
☐ Substance Abuse ☐ Property Damage
☐ Unauthorized ☐ Non-physical Aggression
Absence (AWOL) ☐ Theft
☐ Harm To Self ☐ Other: _____

Alleged Client Abuse:

☐ Sexual
☐ Physical
☐ Psychological
☐ Financial
☐ Neglect

CHILD INVOLVED	TYPE OF PLACEMENT	AGE	GENDER	DATE OF ADMISSION
	Choose One		Choose One	
	Choose One		Choose One	
	Choose One		Choose One	
	Choose One		Choose One	

AGENCIES / INDIVIDUALS NOTIFIED	NAME	PHONE
LICENSING		
LAW ENFORCEMENT		
PLACEMENT AGENCY		
AUTHORIZED REPRESENTATIVE		

IF A POLICE REPORT WAS FILED, PROVIDE NUMBER IF KNOWN (Optional) _____

WERE DE-ESCALATION TECHNIQUES USED PRIOR TO CONTACTING LAW ENFORCEMENT? ☐ YES ☐ NO

IF YES, EXPLAIN THE TECHNIQUES THAT WERE USED. IF NO, EXPLAIN WHY NOT.

DESCRIPTION OF INCIDENT. INCLUDE NATURE OF INCIDENT, ACTION TAKEN BY STAFF IN RESPONSE TO THE INCIDENT, AND DISPOSITION OR CURRENT STATUS OF THE INCIDENT. FOR INCIDENTS IN GROUP HOMES, INCLUDE A DESCRIPTION OF THE EVENTS LEADING UP TO THE INCIDENT.

(Attach additional sheets as needed)

WAS MEDICAL TREATMENT REQUIRED FOR CLIENT? ☐ YES ☐ NO
IF YES, LIST NAME OF ATTENDING PHYSICIAN, FINDINGS, AND TREATMENT, IF ANY.

MANUAL RESTRAINTS (GROUP HOMES / RUNAWAY AND HOMELESS YOUTH SHELTERS/ COMMUNITY TREATMENT FACILITIES ONLY): DOES THE INCIDENT INVOLVE THE USE OF MANUAL RESTRAINTS? ☐ YES ☐ NO
IF YES, ATTACH A SEPARATE SHEET REPORTING INFORMATION REQUIRED BY SECTION 84061(h)(6) OF TITLE 22 REGULATIONS.

RUNAWAYS (GROUP HOMES/COMMUNITY TREATMENT FACILITIES ONLY): DOES THE INCIDENT INVOLVE A RUNAWAY SITUATION? ☐ YES ☐ NO IF YES, ATTACH A SEPARATE SHEET REPORTING INFORMATION REQUIRED BY SECTION 84061(h)(7) OF TITLE 22 REGULATIONS.

Prepared by:	NAME/TITLE	DATE
Reviewed/Approved by:	NAME/TITLE	DATE

PART 2

NAME OF FACILITY (as appears on license)

DATE OF INCIDENT

DATE OF FOLLOW-UP

WAS ANY CHILD RESIDING IN THE FACILITY ALLEGED TO HAVE COMMITTED A CRIME: ☐ YES ☐ NOLIST ANY CHILD INVOLVED (WHETHER OR NOT ALLEGED TO HAVE COMMITTED A CRIME), INCLUDE CHILD(REN) FROM ORIGINAL INCIDENT (**PART 1**):

NAME	GENDER	RACE*	ETHNICITY*	AGE
	Other	Unknown	Choose One	
	Other	Unknown	Choose One	
	Other	Unknown	Choose One	
	Other	Unknown	Choose One	

*See last page for instructions on Race/Ethnicity

(Continue listing on separate sheet if necessary.)

LIST ANY STAFF INVOLVED:

NAME	POSITION

(If no staff were involved, enter "N/A" above.)

(Continue listing on separate sheet if necessary.)

WHO INITIATED CONTACT WITH LAW ENFORCEMENT? (Optional):
☐ STAFF ☐ OTHER YOUTH ☐ NEIGHBOR ☐ OTHER _____ ☐ UNKNOWN
TYPE OF OUTCOME (check all that apply)

- | | | | |
|---|---|---|--|
| <input type="checkbox"/> 5150 | <input type="checkbox"/> Counseled by Law Enforcement | <input type="checkbox"/> Mental Health Evaluation | <input type="checkbox"/> Unknown |
| <input type="checkbox"/> Arrest(s) Made | <input type="checkbox"/> Juvenile Hall | <input type="checkbox"/> Other _____ | <input type="checkbox"/> Staff Disciplined |
| <input type="checkbox"/> Child Removed from Placement | <input type="checkbox"/> Detained by Law Enforcement | <input type="checkbox"/> Returned to Facility | |

(If any boxes above are checked, explain briefly here and include any additional information. Attach additional sheets as needed.)

Prepared by:	NAME/TITLE	DATE
Reviewed/Approved by:	NAME/TITLE	DATE

ABOUT THE LIC 624-LE

THE LAW: *In accordance with section 1538.7(a) of the Health and Safety Code, "A group home, transitional housing placement provider, community treatment facility, runaway and homeless youth shelter, or short-term residential therapeutic program shall report to the department's Community Care Licensing Division upon the occurrence of any incident concerning a child in the facility involving contact with law enforcement." Within six months of the incident, the facility must "provide a follow-up report for each incident, including the type of incident, whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility; whether staff, children, or both were involved; the gender, race, ethnicity, and age of children involved; and the outcomes, including arrests, removals of children from placement, or termination or suspension of staff."*

Crimes described in Section 602 of the Welfare and Institutions Code are "any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age."

AFFECTED FACILITIES: *Group Homes, Community Treatment Facilities, Transitional Housing Placement Providers, Runaway and Homeless Youth Shelters, and Short-Term Residential Therapeutic Programs must make reports under the law.*

HOW, WHAT AND WHEN TO REPORT: *Affected facilities may (but are not required to) use the LIC 624-LE to report incidents under the law. If a facility uses another method to report an incident, that method must capture all of the information specified by Health and Safety Code section 1538.7(a), and must be submitted within the time allowed by the law. A facility must submit a report on every incident which involves a law enforcement contact, whether or not any child is alleged to have committed a crime. The follow-up report for an incident must be filed within six months, but may be filed sooner (including concurrently with the initial report) provided all outcomes resulting from the incident are known.*

***RACE AND ETHNICITY.** *One of the following races must be selected for each child listed in Part 2 of this form: White, Black, Native American, Asian/Pacific Islander, Other, or Unknown. One of the following ethnicities must be selected for each child listed in Part 2 of this form: Hispanic, Non-Hispanic or Unknown.*

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

The Legislature's intent in passing Assembly Bill 388 (Chapter 760, Statutes of 2014) was to reduce the incidence of foster youth being inappropriately referred to, and detained in, the juvenile justice system for minor incidents and behavior issues solely due to their status as a foster youth and thus give foster youth the same experience as their peers who are not foster youth. The law requires group homes, *short-term residential therapeutic programs*, runaway and homeless youth shelters, community treatment facilities and transitional housing placement providers report to the California Department of Social Services (CDSS) all incidents concerning a child in the facility that involve contact with law enforcement, and provide a follow-up report for each incident within six months. It further requires CDSS to conduct an inspection (supplemental to any other mandated inspection) of facilities that report a higher than average number of law enforcement contacts due to specific crimes alleged to have been committed by residents. The CDSS is also mandated to consult with specified stakeholders in order to develop performance standards and outcome measures related to minimizing law enforcement contacts and delinquency petition filings arising from incidents of allegedly criminal behavior by minors who reside in group homes *and short-term residential therapeutic programs*. The CDSS must promulgate regulations that adopt new requirements necessitated by the mandates of the statute or developed in consultation with stakeholders, as well as to clarify places where the statute's requirements are ambiguous.

The CDSS has endeavored to ensure that these regulatory amendments comply with the non-duplication standard found in Title 1, California Code of Regulations. In some instances, however, the amended regulations duplicate California statute in part where clarification of the law was necessitated and where access to regulatory requirements in their full context is necessary for clarity. Such duplications will be addressed in turn in Section a).

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 84001(1)(1)

Specific Purpose:

A definition for "law enforcement" is added for clarity.

Factual Basis:

This amendment is necessary to clarify the meaning of the term "law enforcement" as used in Sections 84061(i), 84063(a), 84065(i) and (n), 84072.1(c), 84300.1(e) and (f), 84322.2(c), 84361(h), 84365(b) and 84165(f). The definition specifies that for the purpose of these regulations "law enforcement" means any officer, sheriff, or marshal of a city, state, or federal law enforcement agency.

Final Modification:

In response to public comment, the Department has revised the definition for "law enforcement," to include county officials.

Final Modification:

Sections 84002(a) through (d)

Specific Purpose:

These regulations are amended to add Sections 84002(a) incorporating the data collection requirement form, LIC 624-LE (4/17) Law Enforcement Contact Report. Due to this new section, previous Sections 84002(a) through (c) are renumbered to Sections 84002(b) through (d), respectively, with no changes to the text. The reference note is also amended to include Health and Safety Code section 1538.7.

Factual Basis:

Section 84002(a) is necessary to clarify and make specific the data collection requirement by Health and Safety Code section 1538.7.

Sections 84061(i) through Handbook Section 84061(i)(6)

Specific Purpose:

This regulation adds and clarifies new requirements for the reporting of incidents concerning children residing in group homes involving contact with law enforcement as mandated in Health and Safety Code section 1538.7. The reference note is amended to include Health and Safety Code section 1538.7. Finally, an example is placed in the handbook.

Factual Basis:

This regulation is necessary to incorporate new reporting mandates in Health and Safety Code section 1538.7(a) into existing group home regulations detailing incidents which licensees are required to report, as well as to clarify areas that the statute left open to interpretation for the benefit of both the licensees who must comply with this law and CDSS employees who must enforce it. Although Health and Safety Code section 1538.7(a) is repeated in part in Section 84061(i), the clarifications provided, as well as the need to present the requirements in their full context for the sake of clarity, ensure that the regulations does not needlessly violate the non-duplication standard in Title 1, California Code of Regulations.

While statute requires that initial reports on incidents entailing law enforcement contact with a child residing in the facility be made "upon the occurrence," this regulation interprets this term, following standard CDSS practice, to mean no later than the next business day. The requirement in Health and Safety Code section 1538.7(a) that licensees provide a follow-up report for each incident "at least every six months," is interpreted to require an individual report within six months of the incident's occurrence, rather than an aggregate report at six month intervals as the statutory wording could be read to allow. Further, the regulations specify that the follow-up report could be made at any time within six months of each incident, even immediately, if all outcomes and required information are known.

Health and Safety Code section 1538.7(a) requires that incident reports include several data elements, but tie the collection of these elements to the six month follow-up reports. This regulation interprets the statute as requiring those data elements known to the licensee at the time of making the initial report to be included at that time, and that such information need only be provided in the follow-up report if it has changed. In order to prevent unnecessary duplication, this regulation also clarifies that reports made in order to comply with the provisions of Health and Safety Code section 1538.7(a) satisfy any other existing regulatory reporting requirement so long as all required information is provided.

In requiring that group homes and other specified facilities report incidents concerning a child in the facility involving contact with law enforcement, Health and Safety Code section 1538.7 directs that the follow-up report include "whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility." Welfare and Institutions Code section 602, however, does not describe any crimes, but rather states that children under 18 years of age who violate any law, other than an age-based curfew law, are within the jurisdiction of the juvenile court, which may adjudicate them as wards of the court, unless they are 14 years of age or older and have committed murder or specified sex offenses, in which case they shall be prosecuted under the general law in a court of criminal (not juvenile) jurisdiction. Thus, the regulations further clarify that providers must include in the follow-up report whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a child residing in the facility, as referring to Welfare and Institutions Code section 602 does not provide adequate direction.

The regulations and handbook further clarify that routine contact by probation officers supervising the placement of a child need not be reported, though action taken by a probation officer in response to a reportable incident should be reported as an outcome, if known. This distinction is necessary to make clear that incidents to be reported are those that get to the intent of AB 388 of minimizing interactions with the justice system that lead to delinquency petitions. Reporting regular interaction between probation officers and adjudicated dependents would lead to voluminous paperwork which, in addition to burdening licensees, would hinder CDSS' efforts to meet the objective of Health and Safety Code section 1538.7(b) of determining which facilities report a greater than average number of law enforcement contacts.

Final Modification:

In response to public comment, the Department has revised this section to clarify that incidents to be reported are those involving law enforcement contact with a child residing in the facility, as well as to require the use of form LIC 624-LE, or a report containing all the information in LIC 624-LE, for reportable incidents to ensure complete and consistent data collection. Additionally, a subsection has been added [Section 84061(i)(4)] to clarify that additional follow-up reports may be required in those instances when the Department determines that the reports submitted are incomplete, or when reportable outcomes occur after a follow-up report has been submitted. The previous Sections 84061(i)(4) and (5) have been renumbered accordingly. Section 84061(i)(6) renumbered from Section 84061(i)(5) and the associated Handbook that follows have been revised in response to public comment to further clarify the circumstances in which contact with probation officers does and does not constitute contact with law enforcement that must be reported.

Section 84063(a)(8)(A)

Specific Purpose:

Existing regulations require group home boards of directors to conduct meetings, at least quarterly, to review and discuss the facility's operation and documents as specified in Health and Safety Code section 1520.1(f) in order to ensure that their facility is in compliance with all applicable regulations. This regulation adds to this process a review and discussion of all incidents that were reported to CDSS as specified in Section 84061(i).

Factual Basis:

This regulation is necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff. It will ensure that group home boards of directors are aware of the incidents involving children in their facilities in which law enforcement was contacted, enabling them to assess whether the facility's policies and procedures were followed, and whether those policies and procedures could be improved both to limit the incidence of children in their facilities coming into contact with law enforcement or to enhance the safety of children and staff. To the extent that these discussions are captured in the meeting minutes, required by current regulation to be taken and kept as part of the facility's permanent record, they will inform CDSS' inspection of those facilities that are identified as having a greater than average number of law enforcement contacts involving an alleged violation of a crime. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Final Modification:

This regulation is revised so that the language is consistent with changes made to Section 84061(i) in response to public comment. Additionally, "or governing body" is added to Section 84063(a)(8) in response to public comment, addressing those facilities that are operated by cities or counties and thus do not have boards of directors. This language is consistent with recent amendments to Section 1520.1 of the Health and Safety Code.

Section 84165(f)(2)(G)

Specific Purpose:

This regulation is added to include the community treatment facility's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing at the facility to the areas required to be covered in the licensee's on-the-job training and development program.

Factual Basis:

This regulation ensures that all community treatment facility staff are aware of and expected to follow the facility's policies and procedures on when and how to contact law enforcement. This should minimize unnecessary calls to law enforcement, and help meet the legislature's intent, as stated in Section 1 of AB 388, that the frequency of law enforcement involvement and delinquency petitions arising from incidents at group homes and other facilities be reduced. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 84165(f)(2)(G) is included here to place in numerical order. It originally appears in the Initial Statement of Reasons on page 11. There are no final modifications to the text.

Sections 84322(e)(1)(C) and (f)(5)(B)

Specific Purpose:

Sections 84322(e)(1)(C) and (f)(5)(B) qualify that the policies and procedures in the preceding subparagraphs shall not be interpreted to require a licensee to take or be prevented from taking, any action that would endanger the health and safety of either children or staff.

Factual Basis:

These regulations are necessary to ensure the health and safety of children and staff in group homes by making clear that the policies and procedures required to be included in a facility's emergency intervention plan pursuant to Sections 84322(e)(1)(B) and (f)(5)(A) do not have the unintended consequence of inhibiting calls to law enforcement in situations where such action is warranted to ensure health and safety. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Final Modification:

These sections are revised by the Department in response to public comment to add "others" in addition to "children in care" and "staff" as persons whose health and safety is to be protected when determining whether or not to take action in response to an emergency. Grammatical changes which do not change the original intent of the proposed regulation have also been made for clarity. As previously written, the regulation may have been construed as stating that a provider would be justified in not taking an action that might ensure the health and safety of children in care or staff.

Section 86001(l)(1)

Specific Purpose:

A definition for "law enforcement" is added for clarity.

Factual Basis:

This amendment is necessary to clarify the meaning of the term "law enforcement" as used in Sections 86022(a), 86061(a) and 86065(a). The definition specifies that for the purpose of these regulations "law enforcement" means any officer, sheriff, or marshal of a city, state, or federal law enforcement agency.

Final Modification:

In response to public comment, the Department has revised the definition for "law enforcement" by adding "county," to include county officials.

Section 86022(a)(7)

Specific Purpose:

This regulation is added to require that transitional housing placement program licensees include policies and procedures on when and how to involve law enforcement in response to incidents at their facilities in their plans of operation. The plan of operation must further explain how licensees will communicate these policies and procedures to staff, participants and participants' authorized representative(s).

Factual Basis:

Requiring transitional housing placement program licensees to include these policies and procedures in their plans of operation is a critical initial step toward meeting AB 388's intent that contact between youth and law enforcement as well as the delinquency petitions that sometimes result from them be reduced. The CCLD will be able to review these policies and procedures up front as well as assess their relative effectiveness once the methodology for determining what constitutes a "greater than average number of law enforcement contacts involving an alleged violation of a crime" is developed and facilities above and below the average are identified. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Final Modification:

Grammatical changes which do not change the original intent of the proposed regulation have been made for consistency. Specifically, the word "facility" has been replaced with "THPP" and "a THPP living unit" to conform to the terminology that is used in the existing Transitional Housing Placement Program regulations.

Section 86022(a)(7)(A)

Specific Purpose:

Section 86022(a)(7)(A) qualifies that the policies and procedures in the preceding regulation [Section 86022(a)(7)], shall not be interpreted to require a THPP licensee to take or be prevented from taking, any action that would endanger the health and safety of either participants or staff.

Factual Basis:

This regulation is necessary to ensure the health and safety of participants and staff in transitional housing placement programs by making clear that the policies and procedures required to be included in a facility's plan of operation pursuant to Section 86022(a)(7) do not have the unintended consequence of inhibiting calls to law enforcement in situations where such action is warranted to ensure health and safety. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Final Modification:

Grammatical changes which do not change the original intent of the proposed regulation have been made for clarity. As previously written, the regulation may have been construed as stating that a provider would be justified in not taking an action that might ensure the health and safety of children in care or staff.

Section 86061(a)(7) through Handbook Section 86061(a)(7)(E)

Specific Purpose:

This regulation adds new requirements for the reporting of incidents concerning participants served by transitional housing placement programs involving contact with law enforcement as mandated in Health and Safety Code section 1538.7. The reference note is amended to include Health and Safety Code section 1538.7.

Factual Basis:

This regulation is necessary to incorporate new reporting mandates in Health and Safety Code section 1538.7(a) into existing transitional housing placement program regulations detailing incidents which licensees are required to report, as well as to clarify areas that the statute left open to interpretation for the benefit of both the licensees who must comply with this law and the CDSS employees who must enforce it.

Although Health and Safety Code section 1538.7(a) is repeated in part in Section 84061(i), the clarifications provided, as well as the need to present the requirements in their full context for the sake of clarity, ensure that the regulations does not needlessly violate the non-duplication standard in Title 1, California Code of Regulations.

While statute requires that initial reports on incidents entailing law enforcement contact with a child residing in the facility be made "upon the occurrence," this regulation interprets this term, following standard CDSS practice, to mean no later than the next business day. The requirement in Health and Safety Code section 1538.7(a) that licensees provide a follow-up report for each incident "at least every six months," is interpreted to require an individual report within six months of the incident's occurrence, rather than an aggregate report at six month intervals as the statutory wording could be read to allow. Further, the regulations specify that the follow-up report could be made at any time within six months of each incident, even immediately, if all outcomes and required information are known.

Health and Safety Code section 1538.7(a) requires that incident reports include several data elements, but tie the collection of these elements to the six month follow-up reports. This regulation interprets the statute as requiring those data elements known to the licensee at the time of making the initial report to be included at that time, and that such information need only be provided in the follow-up report if it has changed. In order to prevent unnecessary duplication, this regulation also clarifies that reports made in order to comply with the provisions of Health and Safety Code section 1538.7(a) satisfy any other existing regulatory reporting requirement so long as all required information is provided.

In requiring that THPPs and other specified facilities report incidents concerning a child in the facility involving contact with law enforcement, Health and Safety Code section 1538.7 directs that the follow-up report include "whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility." Welfare and Institutions Code section 602, however, does not describe any crimes, but rather states that children under 18 years of age who violate any law, other than an age-based curfew law, are within the jurisdiction of the juvenile court, which may adjudicate them as wards of the court, unless they are 14 years of age or older and have committed murder or specified sex offenses, in which case they shall be prosecuted under the general law in a court of criminal (not juvenile) jurisdiction. Thus, the regulations further clarify that providers must include in the follow-up report whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a child residing in the facility, as referring to Welfare and Institutions Code section 602 does not provide adequate direction.

Final Modification:

The section title above has been updated to accurately reflect the affected sections.

In response to public comment, the Department has revised this section to clarify that incidents to be reported are those involving law enforcement contact with a participant residing in the facility, as well as to require the use of form LIC 624-LE, or a report containing all the information required in LIC 624-LE, for reportable incidents to ensure complete and consistent data collection. Additionally, Subsection 86061(a)(7)(C) has been added to clarify that additional follow-up reports may be required in some instances if determined by the Department to be incomplete, or if reportable outcomes occur after the follow-up report has been submitted. The previous Subsection 86061(a)(7)(C) is renumbered to Subsection 86061(a)(7)(D).

Subsection 86061(a)(7)(E) and a Handbook section have been added to clarify that routine contact by probation officers supervising the placement of a participant need not be reported, though action taken by a probation officer in response to a reportable incident should be reported as an outcome, if known. This distinction is necessary to make clear that incidents to be reported are those that get to the intent of AB 388 of minimizing interactions with the justice system that lead to delinquency petitions. This regulation and Handbook section mirror in THPP regulations proposed regulations for group homes in Section 84061(i)(6), and should have been part of the initial filing.

Section 86065(a)(1)(B)

Specific Purpose:

This regulation adds the transitional housing placement program's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a participant residing at the facility as a required training topic for all THPP personnel.

Factual Basis:

This regulation is necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff.

As AB 388 subjected transitional housing placement programs to the reporting requirements in the bill, CDSS believes it is appropriate to extend some of the recommendations that came out of the aforementioned workgroup to THPPs. By ensuring that all THPP personnel is aware of, and expected to follow, the facility's policies and procedures on when and how to contact law enforcement, unnecessary calls to law enforcement should be minimized, which will meet the legislature's intent, as stated in Section 1 of AB 388, that the frequency of law enforcement involvement and delinquency petitions arising from incidents at group homes and other facilities licensed to provide residential care to dependent children be reduced.

This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Final Modification:

Grammatical changes which do not change the original intent of the proposed regulation have been made for clarity. The word "facility" has been replaced with "THPP" or "THPP living unit" for consistency with terminology used in existing THPP regulations.

b) **Additional Documents Upon Which Department Is Relying**

Assembly Bill 403, Chapter 773, Statutes of 2015.

Assembly Bill 1997, Chapter 612, Statutes of 2016.

c) **45-Day Public Notice/Public Comment Period**

These regulations were noticed to the public for a minimum of 45-days beginning July 22, 2016, and considered as Item #2 at the public hearing held on September 7, 2016, in Sacramento, California. The public comment period closed at 5:00 p.m. on September 7, 2016. Public comments were received during the comment period in writing only. Comments were provided by:

Children Now, Tim Morrison
Children's Advocacy Institute, Christina Riehl
California Alliance, Douglas K. Johnson
Youth Law Center, Cat McCulloch
Clawson Julian & Associates, Bill Clawson

The comments listed by commenter and the Department's responses are as follows:

Comments from Children Now

1. Inspection "Trigger"

"Health and Safety Code section §1538.7 requires the California Department of Social Services (hereafter, the "Department") to annually inspect a group home, transitional housing placement provider, community treatment facility, or runaway and homeless youth shelter if the Department determines that it has contacted law enforcement representatives in a manner that is "greater than average," based on its licensed capacity. Based on the statute's lack of specificity around what constitutes "greater than average," the Department has wide latitude to develop a methodology that will trigger these inspections, but in order to give meaning to this provision and meet the intent of the Legislature, it must develop a standard definition of "greater than average." Until a definition is established, the facility inspections required by section §1538.7 will not proceed in a consistent manner, and the state will remain out of compliance with current law. We urge you to use this package of proposed regulations to define "greater than average" so that the Licensing Policy Analysts (LPAs) already hired by the Community Care Licensing Division (CCLD) can consistently conduct the inspections for which they were hired."

CDSS RESPONSE:

Thank you for your comment. As neither incident reports, nor the information contained in them, were centrally tracked prior to the chaptering of Assembly Bill (AB) 388 (Chapter 760, Statutes of 2014), compiling the data necessary to conclude what is average (and subsequently, what is greater than average) was initially a retroactive and labor intensive process. The methodology that has been developed by the Department is based on principles of statistical analysis and will ensure that inspections are conducted consistently. "Average," and "greater than average" are also mathematical terms with generally understood meaning. However, determining which providers are subject to annual inspection is a requirement on the Department, not on providers. Therefore, the Department does not believe it is appropriate to define "greater than average" in its licensing regulations, which govern group homes and other community care facilities and detail the requirements to which a licensee must adhere.

2. Consistency of Reporting

"The reporting requirements of AB 388 are only meaningful if they are consistently reported by children's residential facilities. In order for the reporting and inspection components of this law to be effective, it is vital that all affected facilities consistently report law enforcement contacts. If reporting is inconsistent, the to-be-inspected facilities will not be those in need of support and intervention to minimize unnecessary police contact and delinquency petition filings, but rather will be those that are effectively upholding the law and reporting all reportable incidents. CCLD must monitor for AB 388 reporting compliance to ensure that the inspections are targeted to facilities in need of support and intervention. This compliance monitoring may take effect through annual, unannounced visits by CCLD (as authorized by Health and Safety Section 1534) or other means, such as by requesting "call for service" reports from local law enforcement agencies."

CDSS RESPONSE:

Thank you for your comment. The Department is aware of the need for consistent reporting of law enforcement contacts with youth in order for AB 388 to be effective, as we rely on timely and accurate reporting of all reportable incidents to ensure that facilities are providing adequate care and supervision. The Department has added the relevant elements from the statute to the information required to be reported to these regulations, and also required in regulations that LIC 624-LE, or a report containing all the information required in LIC 624-LE, be used to report law enforcement contacts. The Department will use the means at our disposal to ensure compliance, including leveraging our presence during inspections for other purposes in the affected facilities. The Department does not believe that further action is required in these licensing regulations to ensure consistency of reporting.

3. Performance Standards and Outcome Measures

"Performance Standards – Through the addition of Welfare and Institutions Code section §11469(f), AB 388 required the department to " ... Develop additional performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff."

While we greatly appreciate CCLD's efforts and partnership in the development of the proposed performance standards, there is a notable and problematic omission that conflicts with the provision, in Welfare and Institutions Code section §11469(b): "Regulations regarding the implementation of the group home performance standards system required by this section shall be adopted no later than one year prior to implementation. The regulations shall specify both the performance standards system and the manner by which the AFDC-FC rate of a group home program shall be adjusted if performance standards are not met."

The performance standards proposed by this regulations package do not describe how they would affect or adjust the AFDC-FC rate of a group home when performance standards are not met. Both the letter and the spirit of the law enacted by AB 388 require greater specificity on this matter. Furthermore, given that "regulations regarding the implementation of the group home performance standards ... shall be adopted no later than one year prior to implementation," we strongly urge you to use this regulations package as the vehicle with which to refine these regulations as needed, as opposed to waiting for a future package.

Outcome Measures – While the proposed regulations would establish strong performance standards, they do not address the "other" half of newly-added Welfare and Institutions Code section §11469(f) which reads, in part: "By January 1, 2016, the department ... shall develop additional performance standards and outcome measures (emphasis added) that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff."

In other words, the law requires the Department to not only develop performance standards but also outcome measures. The required outcome measures would serve a distinct but complementary purpose to the performance standards. They would not directly affect AFDC-FC rate adjustments, but instead play a critical role in assessing the effectiveness of the performance standards. They are a critical component of this law but have not been addressed through the package of proposed regulations. We understand the tremendous workload placed on the Department by the requirements of AB 403 and the Continuum of Care Reform (CCR) and, because the implementation of AB 388 is already well past its deadline, we do not ask that you delay the development of these regulations in order to add the required outcome standards. However, we do ask that you develop and disseminate an assurance that the AB 388-mandated outcome measures will be finalized before the end of 2017 (at the very latest), perhaps in tandem with the implementation of CCR."

CDSS RESPONSE:

Thank you for your comments. As you are aware, AB 388 was introduced while the Continuum of Care Reform (CCR) initiative was well underway; a reform that includes substantial changes to group homes in California. Implementation of AB 388 thus requires a degree of integration with the broader Continuum of Care Reform effort. Rates are an area overseen by the Department's Child and Family Services Division (CFSD), and the Department's licensing regulations are not the appropriate venue for outlining how a facility's rate could be impacted by its failure to meet performance standards. As part of the Continuum of Care Reform, CFSD, through the Continuum of Care Reform Branch, is in the process of developing performance standards and outcome measures for group homes, short-term residential therapeutic programs and other facilities licensed by the Department, which will include those mandated by AB 388. The Continuum of Care Reform Branch has a Performance and Oversight Workgroup and may be contacted at ccoversight@dss.ca.gov on this matter.

Comments from Children's Advocacy Institute

1. Follow-Up Reports for Outcomes (Section 84061(i)(4))

"Health and Safety Code § 1538.7 requires a group home, transitional housing placement provider, community treatment facility, or runaway and homeless youth shelter to report to the California Department of Social Services' ("CDSS") Community Care Licensing Division when there is an incident involving a child's contact with law enforcement. Additionally, subdivision (a) requires a follow-up report for each incident "at least every six months". While the regulations correctly specify that the follow-up report could be made at any time within six months of each incident, even immediately, if all outcomes and required information are known, the regulation fails to address the fact that the statute requiring follow-up "at least every six months" indicates a continuing reporting requirement. For example, where the outcome of the incident is not yet known at the expiration of six months, further follow-up may be necessary. This situation could arise, for example, if an investigation is ongoing regarding termination or suspension of staff and that the outcome of the investigation has not concluded six months after the date of the incident. In this case, continued reporting would be required until all of the information required in (i)(2) is known and unchanged. Therefore, we suggest that a new subdivision (i) (4) be inserted into § 84061 to read:

'If the outcomes and required and required information are not known within six months of the incident, the licensee shall provide a follow-up report including any updated information from subdivision (2) within six months of the first follow-up report. Follow-up reports must be continually provided within six months of the previous report until there are no changes to the information provided pursuant to subdivision (2).'

Further, we suggest the current subdivisions (i) (4) and (5) of § 84061 be renumbered (i) (5) and (6), respectively. We believe this proposed change will provide the full body of information intended by AB 388 (2014).

CDSS RESPONSE:

Thank you for your comment. The Department believes, based on what has been experienced in the field to date, that the majority of incident report outcomes will be known within six months, but acknowledge that will not always be the case. The Department is concerned, however, that requiring facilities to report on every incident, every six months until all information is known and there are no changes, as suggested, could prove unduly cumbersome to facilities and to the Department. Therefore, the Department is instead adding Section 84061(i)(4) to read:

(4) The licensee may be required to provide follow-up reports beyond the first six months if the Department determines that the information provided in either the initial or follow-up reports is incomplete, or if outcomes required to be reported are not known until later than six months after the initial report.

This will ultimately put the onus on the Department to retrieve only the information it considers relevant to meeting the intent of AB 388.

2. Annual Inspections

"Health and Safety Code § 1538.7 requires CDSS to annually inspect a group home, transitional housing placement provider, community treatment facility, or runaway and homeless youth shelter if CDSS determines that the placement provider has reported "a greater than average number of law enforcement contacts involving an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility" (Health and Safety Code § 1538.7 (b)(1)). This phrase, "greater than average number of law enforcement contacts" is vague and needs regulations developing a standard definition. Until a standard and more precise definition is established, the facility inspections required by § 1538.7 are not likely to proceed in a consistent manner and the state will, therefore, not be complying with intent of current law. This phrase must be defined in the current regulatory package to assure AB 388 (2014) is fully implemented."

CDSS RESPONSE:

Thank you for your comment. Health and Safety Code section 1538.7(b)(1) states: "If the department determines that, based on the licensed capacity, a facility has reported, pursuant to subdivision (a), a greater than average number of law enforcement contacts involving an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility, the department shall inspect the facility at least once a year." As neither incident reports, nor the information contained in them, were centrally tracked prior to the chaptering of Assembly Bill (AB) 388 (Chapter 760, Statutes of 2014), compiling the data necessary to conclude what is average (and subsequently, what is greater than average) was initially a retroactive and labor intensive process. The methodology that has been developed by the Department is based on principles of statistical analysis and will ensure that inspections are conducted consistently. "Average," and "greater than average" are also mathematical terms with generally understood meaning. However, determining which providers are subject to annual inspection is a requirement on the Department, not on providers. Therefore, the Department does not believe it is appropriate to define "greater than average" in its licensing regulations, which govern group homes and other community care facilities and detail the requirements to which a licensee must adhere.

3. Outcome Measures

"The proposed regulations establish strong performance standards but, unfortunately, do not address outcome measures required by Welfare and Institutions Code § 11469(f). This law requires CDSS to, by January 1, 2016, "develop additional performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff." (Welf. & Inst. Code § 11469(f) emphasis added.)

The required outcome measures play a critical role in assessing the effectiveness of performance standards. They are a critical component of this law that have not been addressed in the current package of proposed regulations. We request that outcome measures be created to fully address the appropriateness of the performance standards."

CDSS RESPONSE:

Thank you for your comments. As you are aware, AB 388 was introduced while the Continuum of Care Reform (CCR) initiative was well underway; a reform that includes substantial changes to group homes in California. Implementation of AB 388 thus requires a degree of integration with the broader CCR effort. As part of the Continuum of Care Reform, the Department's Child and Family Services Division (CFSD), through its Continuum of Care Reform Branch, is in the process of developing performance standards and outcome measures for group homes, short-term residential therapeutic programs and other facilities licensed by the Department, which will include those mandated by AB 388. The Continuum of Care Reform Branch has a Performance and Oversight Workgroup and may be contacted at ccroversight@dss.ca.gov on this matter.

Comments from the California Alliance of Child and Family Services

1. Out-Of-State Group Homes

"It is unclear to us whether these regulations are intended to apply to group homes and Short-Term Residential Treatment Program (STRTPs) which are located and licensed outside of California. We recommend that that language be added to clarify that out-of-state group homes and STRTPs, particularly those which accept for placement foster children being placed by California County child welfare agencies and/or probation departments. Among other things, this issue of whether out-of-state facilities are covered by these regulations affects the analysis in section f), Economic Impact Assessment, in the Initial Statement of Reasons, and how compliance will be measured."

CDSS RESPONSE:

Thank you for your comment. The Department does not believe that clarification is necessary in these regulations regarding their applicability to out-of-state group homes and short-term residential therapeutic programs (STRTPs), because they are clearly applicable in Family Code section 7911. Family Code Section 7911(b) states in part that "The Legislature therefore affirms its intention that the State Department of Social Services has full authority to ... ensure that out-of-state group homes, accepting California children, meet all California group home licensing standards. Family Code section 7911(c) states, "The Legislature also affirms its intention that, on and after January 1, 2017, the licensing standards applicable to out-of-state group homes certified by the department shall be those required of short-term residential therapeutic programs operated in this state." The Interim Licensing Standards for STRTPs include the requirements proposed to implement AB 388 in these regulations.

The Department already monitors the compliance of out-of-state group homes and is budgeted to inspect these facilities. Therefore, the Department does not believe that the analysis in the Economic Impact Assessment portion of the Initial Statement of Reasons requires revision.

2. Section 84061(i)

"In the text of the proposed regulations, Section 84061 – Reporting Requirements, subdivision (i) would state that: "(i) The licensee shall submit reports to the Department regarding any incident concerning a child in the facility involving contact with law enforcement." **[Emphasis added.]**

It is unclear to us precisely which incidents a licensee would be required to report to the Department.

Does "a child in the facility" only refer to children placed at that facility? Or, does it also include children who may be visiting or otherwise present on the facility site but not in placement at that site?

For children who are placed at that facility, does it only cover incidents involving such children which occur on that site? Or, does it also include incidents which involve children who are placed at that facility, but which occur elsewhere.

It is our understanding that children who are placed at a facility are presumed by the Department to be under the supervision of the staff of that facility when they are present at that facility. However, if a child who is placed at a facility is not at that facility, and an incident occurs with result in contact with law enforcement, does that fall under Section 84061(i)? In other cases, children placed at a facility are offsite but are NOT under the supervision of facility staff, such as when they are at a school which is not on the facility site.

If an incident does not occur at the facility, but law enforcement comes to the facility to contact the child, does that fall under Section 84061(i)? If an incident does occur at the facility, but law enforcement contacts the child when the child is not at the facility (e.g. at school), does that fall under Section 84061(i)?"

CDSS RESPONSE:

Thank you for your comments. The Department agrees that this regulation could be clearer that it requires reporting of any law enforcement contact involving a child residing in the facility, and is amending 84061(i) to read:

(i) The licensee shall submit reports to the Department, using form LIC 624-LE, or a report containing all the information required in LIC 624-LE, regarding any incident that involves law enforcement contact with ~~concerning a child residing in the facility~~ involving contact with law enforcement.

As clarified in CCL Informational Memo -- 2015-04, the law requires the reporting of every incident involving law enforcement contact with a child placed in a facility. It does not limit reporting to only those incidents that occur on site.

3. **Section 84061(i)(2)**

"In the text of the proposed regulations, Section 84061 – Reporting Requirements, subdivision (i)(2) would state that: "(2) Within six months of the incident, the licensee shall provide a follow-up report for each incident that includes the following information: ... (C) Whether staff, **children**, or both were involved in the incident. (D) The gender, race, ethnicity, and age of **children** involved in the incident." **[Emphasis added.]**

In these two provisions, does "children" were to any child who is involved in the incident, regardless of whether they are placed at the facility? Or, does it only include children who placed at the facility?"

CDSS RESPONSE:

The regulation refers to children placed at the facility.

"Child" is defined in Group Home regulations to mean a child who is placed in a group home. Section 84001(c)(2) states in part:

(2) "Child" means a person who is under 18 placed in a licensed group home by a regional center, a parent or guardian, or a public child placement agency with or without a court order.

4. **Section 84063(a)(8)(A)**

"In the text of the proposed regulations, Section 84063 – Accountability, subdivision (a)(8) would be amended to state that: "(A) Review and discussion of the group home's operation shall include the incidents concerning a child in the facility involving contact with law enforcement that were reported to the Department as specified in Section 84061(i)."

The size and operating responsibilities of the boards of directors of private nonprofit organizations operating group home programs varies. We recommend that, in Handbook or in the Statement of Reasons, that mention in included that a subcommittee of a board of directors may be designated to review and discuss incidents of the kind covered by Section 84061(i) and make a summary report to the full board of directors to meet the requirement of Section 84063(a)(8)(A)."

CDSS RESPONSE:

Thank you for your comment. The Department does not believe that this regulation requires further clarification. The situation described, in which a subcommittee of the board meets to review the incidents covered by Section 84061(i) and makes a summary report to the full board would meet the intent of Section 84063(a)(8)(A).

5. Section 84063(a)(8)

"Since public agencies, including County child welfare and probation departments, sometimes operate group homes and STRTPs, we recommend that the requirement of Section 84063(a)(8)(A) be clarified to include County Boards of Supervisors."

CDSS RESPONSE:

Thank you for your comment. The Department agrees that this regulation does not address those facilities operated by public agencies. Accordingly, Section 84063(a)(8) will be amended to include the phrase "or governing body" to be consistent with the recently amended Health and Safety Code section 1520.1 and read:

(8) Conduct board of directors or governing body meetings at least on a quarterly basis to review and discuss the group home's operation and documents as specified in Health and Safety Code Section 1520.1(f), and based upon the review, ensure that the group home complies with all applicable regulations;

6. Sections 84322(e)(1)(C) and (f)(5)(B)

"In the text of the proposed regulations, Section 84322 – Emergency Intervention Plan, subdivisions (e)(1)(C) and (f)(5)(B) would be amended to state that: "(e)(1)(C) Nothing in Section 84322(e)(1)(A) or (B) shall be interpreted to require a licensee to take, or prevent from taking, any action that would endanger the health and safety of either children in care or staff." "(f)(5)(B) Nothing in Section 84322(f)(5)(A) shall be interpreted to require a licensee to take, or prevent from taking, any action that would endanger the health and safety of either children in care or staff."

We recommend that "or others" be added at the end of each sentence, to read: "... of either children in care ~~or staff~~, staff and others."

CDSS RESPONSE:

Thank you for your comment. The Department agrees and has amended Sections 84322(e)(1)(C) and (f)(5)(B) as recommended above, in addition to making some grammatical revisions to these proposed regulations in the interest of clarity.

Comments from the Youth Law Center

Unnumbered Comments (Introduction).

"As an initial matter, however, we note that we disagree with the agency's Public Notice statement regarding reasonable alternatives to the issuance of regulations, and we are troubled by the ongoing failure to implement core provisions of AB 388 in the manner dictated by the Legislature. (Footnote: Specific examples include Health and Safety Code Section 1536(a)(2), requiring the Director of the California Department of Social Services (CDSS) to publish a list of group homes, transitional housing placement providers, community treatment facilities, runaway and homeless youth shelters, or short-term residential treatment centers, that includes information pertaining to law enforcement contacts made by the facility staff or children, and Health and Safety Code 1538.7(b)(1), requiring that CDSS at least once each year inspect facilities that report a greater than average number of law enforcement contacts involving an alleged violation of criminal law.) Regulations may aid in the resolution of perceived ambiguities and may be helpful to achieve certain goals of the law, but to the greatest extent possible, implementation of AB 388 should not await promulgation of final regulations.

Related to this overarching concern, Welfare and Institutions Code Section 11469(f) required a workgroup to be convened to develop performance standards and outcome measures, which will be key to effectuating AB 388. Promulgation of regulations is not necessary for the development of the performance standards and outcome measures. Given the stated reasons for the proposed regulatory amendments, however, it should be noted that the proposed regulatory package does not include the performance standards and outcome measures required by AB 388. Performance standards are guidelines or measurements of how policies are carried out; they provide a benchmark against which performance is measured. Outcome measures are measurements of results. Requiring that facilities have policies and procedures regarding law enforcement is important, but without performance standards and outcome measures to inform those policies and procedures such requirements are likely to fall short of achieving the objectives of AB 388."

CDSS RESPONSE:

Thank you for your comments. The Department is receptive to receiving additional feedback on the implementation of AB 388, however, without more specific information about your grievance, we are unable to speak to your disagreement with the Public Notice statement on reasonable alternatives to regulations. Workgroups were convened in the development of these proposed regulations and no reasonable alternatives have been presented to CDSS for review. As for your concern about "the ongoing failure to implement the bill as the Legislature intended," prior to passage of this bill, incident information was not collected by the Department in a manner that allowed for an immediate report of the data sought by the bill's author and sponsors. The Department could not meet the reporting and inspection requirements cited in your footnote until it aggregated the data necessary to do so. This process has been labor-intensive, but the Department has worked as quickly as possible to compile the data necessary in order to determine which facilities require additional inspection. Data on law enforcement contacts both aggregate and specific to individual providers was posted on the Department's website earlier this year, and may be found at: <https://secure.dss.ca.gov/CareFacilitySearch/home/ab388>

You also are concerned about the requirement in Welfare and Institutions Code section 11469 that performance standards and outcome measures be developed through a workgroup. As you are aware, AB 388 was introduced while the Continuum of Care Reform (CCR) initiative was well underway; a reform that includes substantial changes to group homes in California. Implementation of AB 388 requires a degree of integration with the broader CCR effort. As part of the Continuum of Care Reform, the Department's Child and Family Services Division (CFS), through its Continuum of Care Reform Branch, is in the process of developing performance standards and outcome measures for group homes, short-term residential therapeutic programs and other facilities licensed by the Department, which will include those mandated by AB 388. The Continuum of Care Reform Branch has a Performance and Oversight Workgroup and may be contacted at ccoversight@dss.ca.gov on this matter.

1. Section 84001

"Modify the definition of "Law Enforcement." The California Penal Code offers a definition of "Law enforcement" that is broader and more inclusive than the definition proposed here. As drafted Section 84001 does not clearly encompass officers who should be included in this definition, including but not limited to those associated with county agencies.

Recommendation: 84001 DEFINITIONS (1)(Reserved)(1) "Law enforcement" means any peace officer as defined in the California Penal Code Section 830 et seq. ~~officer, sheriff, or marshal of a city, state or federal law enforcement agency."~~

CDSS RESPONSE:

Thank you for your comment. The Department agrees that the definition of "Law enforcement" should specifically include county officials, but believes that the Penal Code section 830 et seq. definition is too broad and may confuse the original intent of the issue the bill was attempting to resolve. The Department is amending Section 84001(l)(1) to read:

"(1) "Law enforcement" means any officer, sheriff, or marshal of a city, county, state, or federal law enforcement agency.

2. Section 84061(i)

"Require the use of a standardized form, LIC 624-LE, and clarify that the regulation requires reporting of any law enforcement contact involving a child residing in the facility. Data needs to be collected in a consistent manner so that CDSS can generate the facility list and determine averages, as required by Health and Safety Code Sections 1536(a)(2) and 1538.7(b)(1). Additionally, a standardized process is important to ensure that law enforcement contacts are correctly identified and actually report as such. (Footnote: Again we do not believe a regulatory amendment is needed to instruct licensees to use a standardized form for the required reporting, but the promulgation of regulations presents the opportunity to include use of the standardized form as a requirement if the agency's position is that a regulatory amendment is preferred.)

Recommendation: (i) The licensee shall submit reports to the Department, using form LIC 624-LE, regarding any ~~incident concerning a child in the facility involving contact with law enforcement~~ law enforcement contact involving a child residing in the facility."

CDSS RESPONSE:

Thank you for your comments. The Department agrees that data collection must be consistent and is updating the regulations to require the use of LIC 624-LE, or a report containing all the information required on the LIC 624-LE. The Department also agrees that Section 84061(i) should be revised to clarify that it requires the reporting of any law enforcement contact involving a child *residing* in the facility. The Department is amending Section 84061(i) to read:

(i) The licensee shall submit reports to the Department, using form LIC 624-LE, or a report containing all the information required in LIC 624-LE, regarding any incident that involves law enforcement contact with ~~concerning~~ a child residing in the facility ~~involving that involves contact with law enforcement~~.

3. Section 84061(i)(5) and Handbook Example

"Clarify when it is necessary to report contact with probation officers. Clarify the definition of "contact with law enforcement." Routine contact with probation officers does not need to be reported. However, when contact with probation officers results in revocation or change in terms of probation, taking a youth into the custody of probation, or removal of youth from placement the contact should be reported. Additionally, the regulations as written are inconsistent in their specification of what constitutes contact with law enforcement that must be reported. (See, for example, Sections 84061(i), 84065, 86022(a)(7), and 86061.) We recommend revising to clarify this issue, using the following language.

Recommendation: (5) For the purposes of this subsection, "contact with law enforcement" means contact involving a child residing in the facility with police officers, sheriffs and others as defined in Section 84001(l)(1), which does not include routine contact with a probation officer who is supervising the placement of a child in the facility.

HANDBOOK BEGINS HERE

Example: Routine contacts with probation officers do not need to be reported to the Department. However, contacting a probation officer regarding an incident involving a specific child or children or other contact with a probation officers that results in ~~actions taken by a probation officer in response to a reportable incident involving a child in the facility in which law enforcement was called, including, but not limited to,~~ revocation or changes to the terms of probation, a child being taken into the custody of probation, or the child being removed from placement should be reported as an outcome as required in (i)(2)(E) if known."

CDSS RESPONSE:

Thank you for your comments. The Department agrees and is amending Section 84061(i)(6) (Renumbered to reflect the addition of (i)(4)) and handbook to read:

(6) For the purposes of this subsection, "contact with law enforcement" means contact with by police officers, sheriffs and others as defined in Section 84001(l)(1), with a child residing in the facility, which does not include routine contact with a probation officer who is supervising the placement of a child in the facility.

HANDBOOK BEGINS HERE

Example: Routine contacts with probation officers do not need to be reported to the Department. However, contacting a probation officer regarding an incident involving a specific child or children or other contact with a probation officer that results in action taken by a probation officer in response to a reportable incident involving a child in the facility in which law enforcement was called, including, but not limited to, revocation or changes of the terms of probation, a child being taken into the custody of probation, or the child being removed from placement should be reported as an outcome as required in (i)(2)(E) if known.

HANDBOOK ENDS HERE

4. Section 84065(j)

"Require timely training on new policies and procedures regarding law enforcement and reporting requirements. The proposed regulations set forth training requirements for newly hired staff but do not clearly require timely training of existing staff when new policies and practices are instituted. Training on new policies, procedures, and reporting requirements is particularly important for previously hired staff who may need support in reorienting and modifying approaches previously taken in this area. Additionally, for clarity and consistency, the reference to handbook provisions on law enforcement contact procedures, should be broadened to include policies and procedures as well.

Recommendation: (j) Provided, however, that staff hired prior to the institution of new or amended policies and procedures regarding involvement of law enforcement and reporting requirements shall be trained within 30 day of the implementation of the new or amended policies and procedures."

CDSS RESPONSE:

Thank you for your comment. Requiring that training pertaining to law enforcement involvement and reporting be more urgent than other training topics (which are continually added upon by the Legislature) would create a bad precedent and is outside the scope of the law being implemented through these regulations. Therefore, the Department will not be taking this suggestion.

5. **Section 84300.1(e)**

"Clarify that facilities are required to create a continuum of emergency interventions before calling law enforcement. The proposed regulation references a continuum of emergency interventions, but does not specify the need to create a continuum of emergency interventions to be used prior to or as an alternative to contacting law enforcement.

Recommendation: Law enforcement must not be contacted as a substitute for effective care and supervision or the facility's approved continuum of emergency interventions. Facilities shall develop, maintain, and implement a continuum of emergency interventions to be used prior to or as an alternative to contacting law enforcement."

CDSS RESPONSE:

Thank you for your comment. The Department does not believe that this clarification is necessary given that Section 84300(c) and Section 84322(d)(2) already require a continuum of interventions, and will retain Section 84300.1(e) as currently proposed. Section 84300(c) reads: "The licensee must use a continuum of interventions, starting with the least restrictive intervention. More restrictive interventions may be justified when less restrictive techniques have been attempted and were not effective and the child continues to present an imminent danger for injuring or endangering himself, herself or others." Section 84322(d)(2) requires a group home's plan of operation to include "A description of the continuum of emergency interventions, commencing with early interventions, specifying the emergency intervention techniques to be utilized."

6. **Section 84322(f)(5)**

"Add additional examples of emergency response. The regulations should clarify that law enforcement is not the only community emergency service.

Recommendation: (f) The manual restraint plan is to be included as a component of the emergency intervention plan. If the facility will use, or it is reasonably foreseeable that the facility will use, manual restraints, the plan must include the following: (1)-(4) (Continued) (5) Procedures for accessing community emergency services, including, but not limited to, mobile crisis mental health or law enforcement, if the use of emergency interventions is not effective or appropriate."

CDSS RESPONSE:

Thank you for your comment. The Department is retaining the proposed language, which simply replaces "police/sheriff department" with the broader term "law enforcement," as used in AB 388. Expanding the potential community emergency services a licensee might use for an emergency intervention is beyond the scope of the law these regulations are implementing.

7. **Section 84365(b)(7)**

"Broaden scope of Emergency Intervention Staff Training. Related to the previous comment, the emergency intervention training curriculum should encompass facility policies and practices regarding alternatives to involving law enforcement in response to an incident involving a child residing in the facility.

Recommendation: (7) The facility's policies and procedures concerning when and how to involve law enforcement or other community emergency resources such as mobile mental health."

CDSS RESPONSE:

Thank you for your comment. The Department is retaining its proposed language which requires a facility's emergency intervention training curriculum to include its policies and procedures concerning when and how to involve law enforcement – as proposed by these regulations – to be included in the facility's emergency intervention plan in Section 84322(e)(1)(B). Broadening the scope of emergency intervention training is beyond the parameters of the law these regulations are implementing.

8. **Section 86001**

"Modify the definition of "Law Enforcement." See comment 1 above."

CDSS RESPONSE:

Thank you for your comment. The Department agrees that the definition of "Law enforcement" should specifically include county officials, but believes that the Penal Code Section 830 et seq. definition is too broad and may confuse the original intent of the issue the bill was attempting to resolve. The Department is amending Section 86001(l)(1) to read:

"(1) "Law enforcement" means any officer, sheriff, or marshal of a city, county, state, or federal law enforcement agency.

9. **Section 86061(a)(7)**

"Require the use of a standardized form, LIC 624-LE. See comment 2 above."

CDSS RESPONSE:

Thank you for your comments. The Department agrees that data collection must be consistent and is updating the regulations to require the use of LIC 624-LE, or a report containing all the information required on the LIC 624-LE. The Department also agrees that Section 86061(a)(7) should be revised to clarify that it requires the reporting of any law enforcement contact involving a participant *residing* in a THPP living unit. The Department is amending Section 84061(a)(7) to read:

(7) The licensee shall submit reports to the Department, using form LIC 624-LE, or a report containing all the information required in LIC 624-LE, regarding any incident that involves law enforcement contact with ~~concerning~~ a participant residing in a THPP living unit ~~the facility involving contact with law enforcement.~~

10. Section 86061

"Clarify when it is necessary to report contact with probation officers. See comment 3 above."

CDSS RESPONSE:

Thank you for your comments. The Department agrees and is adding Section 86061(a)(7)(E) to read:

(E) For the purposes of this subsection, "contact with law enforcement" means contact by police officers, sheriffs and others, as defined in Section 86001(l)(1), with a participant residing in a THPP living unit, which does not include routine contact with a probation officer who is supervising the placement of a participant in a THPP.

HANDBOOK BEGINS HERE

Example: Routine contacts with probation officers do not need to be reported to the Department. However, contacting a probation officer regarding an incident involving a specific participant or participants or other contact with a probation officer that results in revocation or changes of the terms of probation, a participant being taken into the custody of probation, or the participant being removed from placement should be reported as an outcome as required in (a)(7)(B)5. if known,

HANDBOOK ENDS HERE

Unnumbered Comment (Closing paragraph).

"Additionally, Youth Law Center is aware that some community care facilities are now or will soon be operating under agreements that require them to meet operating standards. The finalized regulations should extend to these facilities."

CDSS RESPONSE:

Thank you for your comments. Transitional Shelter Care Facilities, the community care facilities to be governed by operating standards to which you are likely referring, are not addressed in the provisions of Assembly Bill 388. Therefore, they are outside the scope of the law being implemented through these regulations.

Comments from Clawson Julian & Associates

"I reviewed the proposed regulations in ORD Package 0316-05 designed to promulgate AB 388 (Chesbro) of 2014.

One area of correction that immediately caught my attention is the proposed change to the Handbook section on page 3 of the draft, which cites to California Code of Regulations Title 17, Division 2, Chapter 3, Subchapter 2, Article 3, § 54342 (a) (13) (A) 3. which states " Possesses a valid license as a psychologist from the Medical Board of California or Psychology Examining Board; or" .

However, the Medical Board of California does not license psychologists. The California Board of Psychology licenses and regulates psychologists. I thought that you may wish to address this error prior to publication."

CDSS RESPONSE:

Thank you for your comment. It was necessary to revise the outdated citation in Section 84001(b)(1), which currently refers back to a repealed regulation. However the Title 17 regulations govern the Department of Developmental Services and are thus outside of the Department of Social Service's ability to change. The Department of Social Service has contacted the Department of Developmental Services to inform them of your comment and will correct the information in the handbook to Section 84001(b)(1) when the regulation in Section 54342(a)(13)(A)3 is revised.

UPDATED INFORMATIVE DIGEST

ORD #0316-05

These proposed regulations amend and adopt language in Title 22, Division 6, Chapter 5, Group Home Licensing Requirements; Title 22, Division 6, Chapter 7, Transitional Housing Placement Program Requirements and Title 22, Division 6, Chapter 1, General Licensing Requirements which regulate community care facilities in order to implement Assembly Bill (AB) 388 (Chapter 760, Statutes of 2014).

Current group home and transitional housing placement program (THPP) regulations require licensees to report specified incidents to the California Department of Social Services (CDSS). Generally, such reports are required for incidents in which the health or safety of a child in care is threatened. AB 388 added Section 1538.7 to the Health and Safety Code to require group homes and THPPs to make reports on all incidents in which law enforcement is contacted. Although many incidents that entail law enforcement contact already fall under existing regulatory reporting requirements, some do not.

Proposed regulatory changes will clarify certain ambiguities in Health and Safety Code section 1538.7 presented by AB 388 and allow CDSS to more effectively operationalize the bill's intent. Specifically:

- AB 388 specified timeframes for making reports that are subject to interpretation. It requires that an initial report be made "upon the occurrence" of an incident, but does not define that term. The proposed regulations would, following standard CDSS practice, interpret this term as meaning that an initial report must be filed no later than the next business day following the incident. AB 388 also required a follow-up report for each incident "At least every six months." This could be interpreted to require an individual follow-up report on each incident within six months, or, alternatively, an aggregate report, at six-month intervals, following up on each incident occurring within the preceding six month period. The proposed regulations will interpret this provision as requiring an individual follow-up report for each incident within six months of the occurrence of the incident, and specify that said report could be immediate if all the information required in the follow-up report is known.
- AB 388 specifies a number of data elements associated with the incident to be reported. However, the language of the statute lists these elements as requirements of the six month follow-up report, rather than as part of an initial report, even though some or all of the information may be known to the licensee. Furthermore, even if a licensee voluntarily supplies additional information during

the initial report, the licensee would be required to report that information again as part of the follow-up report. The proposed regulations will interpret this provision of law as requiring that information known to the licensee at the time of making an initial report be included in the initial report, and that such information need only be provided in the follow-up report if it has changed since the initial report.

- The proposed regulations will specify that reports made in accordance with AB 388 requirements also satisfy any other existing regulatory reporting requirement as long as all required information for each reporting requirement is provided. This will prevent licensees from being required to report the same incident twice, both as an otherwise reportable unusual incident, and as one involving contact with law enforcement.
- AB 388 does not define the term “law enforcement.” The proposed regulations interpret it inclusively to mean any public official or agency acting in a law enforcement role, but also clarify that the reporting requirements for “contacts with law enforcement” do not extend to routine interactions between probation officers and the children they are supervising in placement in the affected facilities.
- Form LIC 624-LE (4/17), Law Enforcement Contact Report, which contains and clarifies requirements in Health and Safety Code section 1538.7 and current licensing regulations, is incorporated by reference in these regulations.

In accordance with statute (Welfare and Institutions Code section 11469(f)), the Department consulted with specified stakeholders to develop regulations that require group homes to implement programs and services intended to minimize law enforcement contacts and delinquency petitions arising from incidents at group homes. The proposed regulations include, in part, recommendations from stakeholder workgroups. While AB 388 requires performance standards to apply only to group homes, the practices developed through the workgroup have been applied to THPPs where appropriate in order to ensure consistency among facility types that are required to report law enforcement contacts.

45- day Public Notice Comment Period

These regulations were noticed to the public for a minimum of 45-days beginning July 22, 2017, and considered at a public hearing held on September 7, 2016, in Sacramento, California. Written testimony was received during the 45-day comment period from July 22, to 5:00 p.m. September 7, 2016. The Department has made changes in response to written testimony received during the 45-day comment period and upon further internal review of the regulations. These changes will be noticed to the interested public, as defined by Government Code sections 11347.1(b)(1)-(4), and made available for public inspection during a 15-day renounce comment period.